

MAR 14 2005
Place On Calendar

HOUSE FILE 745
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 138)

Passed House, Date 3-22-05 Passed Senate, Date 4-13-05
Vote: Ayes 98 Nays 0 Vote: Ayes 50 Nays 0
Re-passed
4-21-05 100-0 Approved 4-29-05

A BILL FOR

1 An Act relating to the criminal offense of theft of leased or
2 rented personal property and making penalties applicable.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 745

1 Section 1. Section 714.1, subsection 2, Code 2005, is
2 amended to read as follows:

3 2. Misappropriates property which the person has in trust,
4 or property of another which the person has in the person's
5 possession or control, whether such possession or control is
6 lawful or unlawful, by using or disposing of it in a manner
7 which is inconsistent with or a denial of the trust or of the
8 owner's rights in such property, or conceals found property,
9 or appropriates such property to the person's own use, when
10 the owner of such property is known to the person. ~~Failure~~
11 Except as provided in section 714.4A, failure by a bailee or
12 ~~lessee~~ of personal property to return the property within
13 seventy-two hours after a time specified in a written
14 agreement of ~~lease-or~~ bailment shall be evidence of
15 misappropriation.

16 Sec. 2. NEW SECTION. 714.4A THEFT OF LEASED OR RENTED
17 PERSONAL PROPERTY -- EVIDENCE.

18 1. The fact that a person who has leased or rented
19 personal property of another willfully fails to return or make
20 arrangements acceptable with the lessor or owner to return the
21 personal property to the lessor or owner within one hundred
22 twenty hours after proper notice following expiration or
23 termination of the lease or rental agreement, or willfully
24 conceals the property from the lessor or owner, or sells,
25 pawns, loans, abandons, or gives away the leased or rented
26 property, is material evidence of intent to deprive the lessor
27 or owner of the use and possession of the personal property.

28 2. The fact that a person obtains possession of personal
29 property subject to a lease or rental agreement by means of
30 deception, including but not limited to furnishing a false
31 name, address, place of employment, or other identification to
32 the owner, is evidence that possession was obtained with
33 intent to deprive the lessor or owner of the use and
34 possession of the personal property.

35 3. Unless otherwise agreed to in writing, for the purpose

1 of determining whether a theft as described in this section
2 has occurred, personal property which is the subject of a
3 lease or rental agreement providing the option to buy the
4 personal property is owned by the owner until such time as the
5 owner endorses the sale and transfer of ownership of the
6 leased or rented property to the lessee or renter.

7 4. This section applies to all forms of leases and rental
8 agreements concerning personal property, including but not
9 limited to contracts providing the consumer options to buy the
10 leased or rented personal property, lease-purchase agreements,
11 and rent-to-own contracts.

12 5. For purposes of this section, "proper notice" means a
13 written confirmation of the expiration or termination of the
14 lease or rental agreement sent to the lessee or renter by
15 certified or restricted certified mail to the last known
16 address of the lessee or renter. The notice shall be
17 considered effective on the date of the mailing of the notice
18 regardless of whether or not the lessee or renter signs a
19 receipt for the notice.

20 EXPLANATION

21 This bill provides evidentiary rules for the criminal
22 offense of theft of personal property that is leased or
23 rented. The bill provides that willfully failing to return or
24 making acceptable arrangements to return personal property
25 within 120 hours after proper notice following expiration or
26 termination of the lease or rental agreement is material
27 evidence of intent to deprive of use and possessions. The
28 bill provides that the willful concealment, or the sale,
29 pawning, loan, abandonment, or giving away of the leased or
30 rented personal property is material evidence of intent to
31 deprive of use and possession. Obtaining possession of
32 personal property by means of deception is also made evidence
33 of intent to deprive of use and possession.

34 The owner of the personal property is deemed to be the
35 owner of property until the owner has endorsed the sale and

1 transfer of ownership or unless there has been a written
2 agreement to the contrary. The bill's provisions apply to all
3 forms of leases and rental agreements concerning personal
4 property. Proper notice is defined as written notice sent by
5 certified or restricted certified mail to the last known
6 address of the lessee or renter regardless of whether or not
7 the lessee or renter signs a receipt for the notice.

8 The penalties in Code section 714.2 apply to theft of
9 leased or rented personal property. Theft of property
10 exceeding \$10,000 in value is a class "C" felony. Theft of
11 property exceeding \$1,000 but not more than \$10,000 in value
12 is a class "D" felony. Theft of property exceeding \$500 but
13 not more than \$1,000 in value is an aggravated misdemeanor.
14 Theft of property exceeding \$200 but not more than \$500 in
15 value is a serious misdemeanor. Theft of property with a
16 value of \$200 or less is a simple misdemeanor.

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HOUSE FILE 745

S-3113

1 Amend House File 745, as passed by the House, as
2 follows:

3 1. By striking everything after the enacting
4 clause and inserting the following:

5 "Section 1. Section 714.1, subsection 2, Code
6 2005, is amended to read as follows:

7 2. Misappropriates property which the person has
8 in trust, or property of another which the person has
9 in the person's possession or control, whether such
10 possession or control is lawful or unlawful, by using
11 or disposing of it in a manner which is inconsistent
12 with or a denial of the trust or of the owner's rights
13 in such property, or conceals found property, or
14 appropriates such property to the person's own use,
15 when the owner of such property is known to the
16 person.

17 a. Failure by a bailee or lessee of personal
18 property to return the property within seventy-two
19 hours after a time specified in a written agreement of
20 lease or bailment shall be evidence of
21 misappropriation.

22 b. If a time is not specified in the written
23 agreement of lease or bailment for the expiration or
24 termination of the lease or bailment or for the return
25 of the personal property, failure by a lessee or
26 bailee to return the property within five days after
27 proper notice to the lessee or bailee shall be
28 evidence of misappropriation. For the purposes of
29 this paragraph, "proper notice" means a written notice
30 of the expiration or termination of the lease or
31 bailment agreement sent to the lessee or bailee by
32 certified or restricted certified mail at the address
33 of the lessee or bailee specified in the agreement.
34 The notice shall be considered effective on the date
35 of the mailing of the notice regardless of whether or
36 not the lessee or bailee signs a receipt for the
37 notice."

By KEITH A. KREIMAN
BRAD ZAUN

S-3113 FILED APRIL 12, 2005

SENATE AMENDMENT TO
HOUSE FILE 745

H-1371

1 Amend House File 745, as passed by the House, as
2 follows:

3 1. By striking everything after the enacting
4 clause and inserting the following:

5 "Section 1. Section 714.1, subsection 2, Code
6 2005, is amended to read as follows:

7 2. Misappropriates property which the person has
8 in trust, or property of another which the person has
9 in the person's possession or control, whether such
10 possession or control is lawful or unlawful, by using
11 or disposing of it in a manner which is inconsistent
12 with or a denial of the trust or of the owner's rights
13 in such property, or conceals found property, or
14 appropriates such property to the person's own use,
15 when the owner of such property is known to the
16 person.

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18 property to return the property within seventy-two
19 hours after a time specified in a written agreement of
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22 b. If a time is not specified in the written
23 agreement of lease or bailment for the expiration or
24 termination of the lease or bailment or for the return
25 of the personal property, failure by a lessee or
26 bailee to return the property within five days after
27 proper notice to the lessee or bailee shall be
28 evidence of misappropriation. For the purposes of
29 this paragraph, "proper notice" means a written notice
30 of the expiration or termination of the lease or
31 bailment agreement sent to the lessee or bailee by
32 certified or restricted certified mail at the address
33 of the lessee or bailee specified in the agreement.
34 The notice shall be considered effective on the date
35 of the mailing of the notice regardless of whether or
36 not the lessee or bailee signs a receipt for the
37 notice."

RECEIVED FROM THE SENATE

H-1371 FILED APRIL 14, 2005

Fiscal Services Division
Legislative Services Agency
Fiscal Note

HF 745 - Moveable Property Theft (LSB 1059 HV)

Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)

Fiscal Note Version - New

Description

House File 745 clarifies existing law regarding failure to return leased or rented property after expiration of the lease, or after receiving notice to return the property. Current law provides a graduated system of penalties for theft, ranging from a simple misdemeanor to a Class C felony, depending on the value of the property.

Background

1. According to the Justice Data Warehouse, there were 19,420 charges for theft in calendar year 2003. Of the total, 6,338 charges were dismissed or acquitted. It is not known whether any of the charges were for leased or rented personal property.
2. Average State cost for a simple misdemeanor conviction ranges from \$14 to \$270. The dismissal/acquittal rate is 30.0%.
3. Average State cost for a serious misdemeanor conviction ranges from \$101 to \$4,100. The dismissal/acquittal rate is 27.0%.
4. Average State cost for an aggravated misdemeanor conviction ranges from \$1,100 to \$5,700. The dismissal/acquittal rate is 27.0%.
5. Average State cost for a Class D felony conviction ranges from \$2,800 to \$12,000. The dismissal/acquittal rate is 43.0%.
6. Average State cost for a Class C felony conviction ranges from \$3,100 to \$23,000. The dismissal/acquittal rate is 39.0%.
7. The cost for a conviction of a serious or aggravated misdemeanor or a Class D or C felony will be incurred over multiple fiscal years as the offender serves time in the correctional system. The costs stated above include the Judicial Branch holding a trial; indigent defense; and supervision while on probation, prison, or parole, if applicable.

Assumptions

1. The law will become effective July 1, 2005. A lag effect of six months is assumed, from the law's effective date to the date of first entry of affected offenders into the correctional system.
2. By clarifying existing law, HF 745 may decrease the dismissal/acquittal rate, thereby increasing the number of convictions for theft of rented or leased property. The number of additional convictions under HF 745 cannot be estimated due to a lack of data.

Correctional Impact

There is a potential for additional convictions under HF 745. That number cannot be estimated due to a lack of data. However, it is anticipated that there will not be a significant number of new convictions. Therefore, the correctional impact is not expected to be significant.

Fiscal Impact

The Fiscal impact of HF 745 cannot be determined due to insufficient information. However, the fiscal impact is not anticipated to be significant.

Sources

Department of Human Rights, Criminal and Juvenile Justice Planning Division
Department of Corrections
State Public Defender's Office
Judicial Branch

/s/ Holly M. Lyons

March 14, 2005

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

Van Fossen - ch
Boal Jochum
~~_____~~

HSB 138
JUDICIARY

Successor by
0745
HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON PAULSEN)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the criminal offense of theft of leased or
2 rented personal property and making penalties applicable.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 Section 1. Section 714.1, subsection 2, Code 2005, is
2 amended to read as follows:

3 2. Misappropriates property which the person has in trust,
4 or property of another which the person has in the person's
5 possession or control, whether such possession or control is
6 lawful or unlawful, by using or disposing of it in a manner
7 which is inconsistent with or a denial of the trust or of the
8 owner's rights in such property, or conceals found property,
9 or appropriates such property to the person's own use, when
10 the owner of such property is known to the person. ~~Failure~~
11 Except as provided in section 714.4A, failure by a bailee or
12 lessee of personal property to return the property within
13 seventy-two hours after a time specified in a written
14 agreement of ~~lease-or~~ bailment shall be evidence of
15 misappropriation.

16 Sec. 2. NEW SECTION. 714.4A THEFT OF LEASED OR RENTED
17 PERSONAL PROPERTY -- EVIDENCE.

18 1. The fact that a person who has leased or rented
19 personal property of another willfully fails to return or make
20 arrangements acceptable with the lessor or owner to return the
21 personal property to the lessor or owner within seventy-two
22 hours after proper notice following expiration or termination
23 of the lease or rental agreement, or willfully conceals the
24 property from the lessor or owner, or sells, pawns, loans,
25 abandons, or gives away the leased or rented property, is
26 material evidence of intent to deprive the lessor or owner of
27 the use and possession of the personal property.

28 2. If the personal property leased or rented is a motor
29 vehicle, this section shall not apply if return of the motor
30 vehicle is made more difficult or expensive by a defect in
31 such vehicle which renders the vehicle inoperable, if the
32 lessee or renter notifies the lessor or owner of the location
33 of such vehicle and such defect prior to the expiration of the
34 lease or rental agreement.

35 3. The fact that a person obtains possession of personal

1 property subject to a lease or rental agreement by means of
2 deception, including but not limited to furnishing a false
3 name, address, place of employment, or other identification to
4 the owner, is evidence that possession was obtained with
5 intent to deprive the lessor or owner of the use and
6 possession of the personal property.

7 4. Unless otherwise agreed to in writing, for the purpose
8 of determining whether a theft as described in this section
9 has occurred, personal property which is the subject of a
10 lease or rental agreement providing the option to buy the
11 personal property is owned by the owner until such time as the
12 owner endorses the sale and transfer of ownership of the
13 leased or rented property to the lessee or renter.

14 5. This section applies to all forms of leases and rental
15 agreements concerning personal property, including but not
16 limited to contracts providing the consumer options to buy the
17 leased or rented personal property, lease-purchase agreements,
18 and rent-to-own contracts.

19 6. For purposes of this section, "proper notice" means a
20 written confirmation of the expiration or termination of the
21 lease or rental agreement sent to the lessee or renter by
22 certified or restricted certified mail to the last known
23 address of the lessee or renter. The notice shall be
24 considered effective on the date of the mailing of the notice
25 regardless of whether or not the lessee or renter signs a
26 receipt for the notice.

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EXPLANATION

28 This bill provides evidentiary rules for the criminal
29 offense of theft of personal property that is leased or
30 rented. The bill provides that willfully failing to return or
31 making acceptable arrangements to return personal property
32 within 72 hours after proper notice following expiration or
33 termination of the lease or rental agreement is material
34 evidence of intent to deprive of use and possessions. The
35 bill provides that the willful concealment, or the sale,

1 pawning, loan, abandonment, or giving away of the leased or
2 rented personal property is material evidence of intent to
3 deprive of use and possession.

4 The bill provides that the provision does not apply if the
5 personal property that is leased or rented is a motor vehicle
6 if the reason the vehicle is not timely returned is due to a
7 defect in the vehicle making the vehicle inoperable and the
8 lessee or renter has given notice of the defect to the lessor
9 or owner prior to the expiration of the lease or rental
10 agreement. Obtaining possession of personal property by means
11 of deception is also made evidence of intent to deprive of use
12 and possession.

13 The owner of the personal property is deemed to be the
14 owner of property until the owner has endorsed the sale and
15 transfer of ownership or unless there has been a written
16 agreement to the contrary. The bill's provisions apply to all
17 forms of leases and rental agreements concerning personal
18 property. Proper notice is defined as written notice sent by
19 certified or restricted certified mail to the last known
20 address of the lessee or renter regardless of whether or not
21 the lessee or renter signs a receipt for the notice.

22 The penalties in Code section 714.2 apply to theft of
23 leased or rented personal property. Theft of property
24 exceeding \$10,000 in value is a class "C" felony. Theft of
25 property exceeding \$1,000 but not more than \$10,000 in value
26 is a class "D" felony. Theft of property exceeding \$500 but
27 not more than \$1,000 in value is an aggravated misdemeanor.
28 Theft of property exceeding \$200 but not more than \$500 in
29 value is a serious misdemeanor. Theft of property with a
30 value of \$200 or less is a simple misdemeanor.

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HOUSE FILE 745

AN ACT

RELATING TO THE CRIMINAL OFFENSE OF THEFT OF LEASED OR RENTED
PERSONAL PROPERTY AND MAKING PENALTIES APPLICABLE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 714.1, subsection 2, Code 2005, is amended to read as follows:

2. Misappropriates property which the person has in trust, or property of another which the person has in the person's possession or control, whether such possession or control is lawful or unlawful, by using or disposing of it in a manner which is inconsistent with or a denial of the trust or of the owner's rights in such property, or conceals found property, or appropriates such property to the person's own use, when the owner of such property is known to the person.

a. Failure by a bailee or lessee of personal property to return the property within seventy-two hours after a time specified in a written agreement of lease or bailment shall be evidence of misappropriation.

b. If a time is not specified in the written agreement of lease or bailment for the expiration or termination of the lease or bailment or for the return of the personal property, failure by a lessee or bailee to return the property within five days after proper notice to the lessee or bailee shall be evidence of misappropriation. For the purposes of this paragraph, "proper notice" means a written notice of the expiration or termination of the lease or bailment agreement sent to the lessee or bailee by certified or restricted certified mail at the address of the lessee or bailee specified in the agreement. The notice shall be considered

effective on the date of the mailing of the notice regardless of whether or not the lessee or bailee signs a receipt for the notice.

CHRISTOPHER C. RANTS
Speaker of the House

JOHN P. KIBBIE
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 745, Eighty-first General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved 4/29, 2005

THOMAS J. VILSACK
Governor